

State of California

Board of Registered Nursing



Uniform Standards Related to

Substance Abuse and Disciplinary Guidelines

**~~Recommended Guidelines~~  
for  
~~Disciplinary Orders~~  
and  
~~Conditions of Probation~~**

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## Introduction



In keeping with its obligation to protect the consumer of nursing services from the unsafe, incompetent and/or negligent registered nurse, the Board of Registered Nursing has adopted the following recommended guidelines for disciplinary orders and conditions of probation for violations of the Nursing Practice Act.

The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently, the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. Except as provided in Uniform Standards Related to Substance Abuse, the Board recognizes that an individual case may necessitate a departure from these guidelines for disciplinary orders. However in such a case, the mitigating or aggravating circumstances must be detailed in the "Finding of Fact" which is in every Proposed Decision, so that the circumstances can be better understood and evaluated by the Board before final action is taken. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

If, at the time of hearing, the Administrative Law Judge finds that the respondent for any reason is not capable of safe practice, the Board favors outright revocation of the license. If, however, the respondent has demonstrated a capacity to practice safe nursing, a stayed revocation order with probation is recommended.

Suspension of a license may also be appropriate where the public may be better protected if the practice of the registered nurse is suspended in order to correct deficiencies in skills, education or personal rehabilitation. (See "Actual Suspension of License" on page 27.)

## Factors to Be Considered

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In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

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# Violations and Recommended Actions



The Nursing Practice Act (Business and Professions Code, Division 2, Chapter 6) and additional sections of the Business and Professions Code specify the offenses for which the Board may take disciplinary action. Following are the code numbers of the offenses and the Board-determined disciplinary action. When filing an accusation, the Office of the Attorney General may also cite additional related statutes and regulations. (The numbers following "Minimum Conditions of Probation" refer to the Standard Probation Conditions or Optional Probation Conditions listed on pages 19-27 of this document. These conditions may vary dependent upon the nature of the offense.)

An actual suspension of licensure may also be required as part of the probation order in addition to the conditions listed below:

Therapy or counseling (Condition 19) is required if the violation resulted in a patient death.

## Nursing Practice Act



### 2761(a)(1)

#### a.) Incompetence or gross negligence.

- Recommended discipline:

*Revocation*

\* .....

Minimum discipline:

*Revocation stayed with 3 years probation.*

\* .....

Minimum conditions of probation:

*1-1~~3~~4 and others as appropriate.*

- Condition ~~4~~924 if patient death occurred.

### 2761(a)(1)

#### b.) Incompetence or gross negligence.

To direct another or to personally falsify and/or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record not pertaining to controlled substances.

\* .....

Minimum discipline:

*Revocation stayed with 3 years probation.*

\* .....

Minimum conditions of probation:

*~~4-13~~1-14 and others as appropriate*

### 2761(a)(2)

#### Conviction of practicing medicine without a license.

- Minimum discipline:

*Revocation stayed with 3 years probation.*

\*

Minimum conditions of probation:

*~~4-13~~1-14 and others as appropriate.*

2761(a)(3)

**Fraudulent advertising.**

- Minimum discipline:  
*Revocation stayed with 3 years probation.*
- Minimum conditions of probation:  
~~4-13~~ 1-14 *and others as appropriate.*

2761(a)(4)

**Disciplinary action against health care license by another state, government agency, or licensing board.**

- Recommended discipline  
*Revocation or  
Revocation stayed with 3 years probation*
- Minimum conditions of probation:  
~~4-13~~ 1-14 *and others as appropriate*  
*(Discipline to be determined based on guidelines' recommended  
discipline for underlying violation(s).)*

2761(a)

**Other actions which constitute unprofessional conduct include but are not limited to:**

**Failure to report client abuse to the appropriate agency.**

- \* Recommended discipline:  
*Revocation*
- \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
- \* Minimum conditions of probation:  
~~4-13~~ 1-14 *and others as appropriate.*

**Holding oneself out as any of the following without meeting the BRN standards:**

- Nurse practitioner – also a violation of Section 2761(j) and 2835
  - Nurse anesthetist – also a violation of Section 2761(j) and 2829
  - Certified nurse midwife – also a violation of Section 2761(j)
  - Public health nurse – also a violation of Section 2761(j)
  - Nurse practitioner with a furnishing number – also a violation of Section 2836.3
  - Nurse midwife with a furnishing number – also a violation of Section 2746.51
  - Board-listed psychiatric mental health nurse
  - Clinical nurse specialist – also a violation of Section 2838
- 
- Minimum discipline:  
*Revocation stayed with 3 years probation.*
  - Minimum conditions of probation:  
~~4-13~~ 1-14 *and others as appropriate*

- 2761 (b) **Procuring a certificate by fraud, misrepresentation, or mistake.**  
\* Minimum discipline:  
*Revocation*
- 2761 (c) **Involvement in the procurement of or assisting in a criminal abortion.**  
\* Minimum discipline:  
*Revocation stayed with 3 years probation.*  
\* Minimum conditions of probation:  
~~4-13~~ 1-14 and others as appropriate.
- 2761(d) **Violating or abetting violation of any section of the Nursing Practice Act.**  
\* Minimum discipline:  
*Revocation stayed with 3 years probation.*  
\* Minimum conditions of probation:  
~~4-13~~ 1-14 and others as appropriate.
- 2761(e) **Furnishing false information.**  
(1) In applying for licensure:  
\* Minimum discipline:  
*Denial or revocation of license.*  
(2) In applying for renewal of license:  
\* Minimum discipline:  
*Revocation stayed with 3 years probation. If the false information pertained to continuing education, then the license should be suspended until evidence of 30 hours of approved continuing education is provided. The suspension is followed by 3 years probation.*  
\* Minimum conditions of probation:  
~~4-13~~ 1-14 and others as appropriate.
- 2761(f) **Conviction of a felony or any offense substantially related to the qualifications, functions and duties of a registered nurse,** in which event the record of the conviction shall be conclusive evidence thereof. Offenses that the Board deems to be substantially related include, but are not limited to, child abuse, murder, rape, assault and/or battery, lewd conduct, theft crimes, and sale or use of controlled substances. In addition, for reinstatement of licensure, the individual must have completed criminal probation and have compelling evidence of rehabilitation substantiated by a recent psychiatric evaluation. (See also 490, 492, and 493).  
• Recommended discipline:  
*Revocation*
- 2761(g) **Impersonating an applicant in an examination.**  
\* Minimum discipline:  
*Revocation*
- 2761(h) **Impersonating another licensed practitioner or allowing another person to use his/her license to practice nursing.**  
\* Minimum discipline:  
*Revocation*



2761(i) Assisting in the violation of any of the provisions of Article 12 (commencing with Section 2221) of Chapter 5, Division 2 (Medical Practice Act).

- \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
- \* Minimum conditions of probation:  
~~4-13~~ 1-14 *and others appropriate.*

2761(j) Holding oneself out as a nurse practitioner without meeting the BRN standards.

- \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
- \* Minimum conditions of probation:  
~~4-13~~ 1-14 *and others as appropriate.*

2761(k) Except for good cause, knowingly failing to protect patients by failing to follow infection control guidelines, thereby risking transmission of blood-borne infectious diseases from licensed or certified nurse to patient, from patient to patient, and from patient to licensed or certified nurse.

No evidence of potential or actual patient harm.

- \* Minimum discipline:  
*Revocation stayed with 3 years probation*
- \* Minimum conditions of probation:  
~~4-13~~ 1-14 *and others as appropriate.*

Potential or actual patient harm evidenced.

- \* Minimum discipline:  
*Revocation*

2762(a) Illegally obtaining, possessing, or administering narcotics or dangerous drugs to self or others.

(1) In cases in which the respondent is selling drugs for personal gain or the respondent replaced, withheld or substituted drugs on the job:

- \* Minimum discipline:  
*Revocation.*

(2) In cases of first time offense, with documented evidence of an on-going rehabilitation program:

- \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
- \* Minimum conditions of probation: ~~4-19~~ 1-24

2762(b) **Use of any narcotic, dangerous drug, or alcohol to the extent that it is dangerous to self or others, or the ability to practice nursing safely is impaired.**

- \* Recommended discipline:  
*Revocation*  
In cases of first time offense with documented evidence of an on-going rehabilitation program:
- \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
- \* Minimum conditions of probation: ~~4-19~~ 1-24

2762(c) **Conviction of a criminal offense involving the prescription, consumption, or self-administration of narcotics, dangerous drugs, or alcohol, or the possession of or falsification of a record pertaining to narcotics or dangerous drugs.** (See also 2761(f) and 2762 (a), (b) and (e).)

- (1) In cases in which the respondent was under the influence, withheld or substituted drugs on the job:
  - \* Minimum discipline:  
*Revocation*
- (2) In cases of first time offense with documented evidence of an on-going rehabilitation program, except in cases where the respondent withheld or substituted drugs on the job:
  - \* Minimum discipline:  
*Revocation stayed with 3 years probation*  
Minimum conditions of probation: ~~4-19~~ 1-24
- (3) In cases where the conviction is for falsification of records pertaining to controlled substances:
  - \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
  - \* Minimum conditions of probation:  
~~4-13~~ 1-14 and others as appropriate

2762(d) **Commitment or confinement by a court of competent jurisdiction for intemperate use of, or addiction to, any narcotics, dangerous drugs or alcohol.**

- \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
- \* Minimum conditions of probation: ~~4-19~~ 1-24

2762(e)

**Falsifying and/or making grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to controlled substances.**

\* Minimum discipline:  
*Revocation stayed with 3 years probation.*  
Minimum conditions of probation:  
*~~4-13~~ 1-14 and others as appropriate*

\*

For repeated and similar acts:

\*

Minimum conditions of probation: ~~4-19~~ 1-24

2836.3(c)

**Incompetence/gross negligence by a nurse practitioner in performing functions related to furnishing drugs or devices.**

\*

Recommended discipline:

*Revocation*

\*

Minimum discipline:  
*Revocation stayed with 3 years probation*  
Minimum conditions of probation:  
*~~4-13~~ 1-14 and others as appropriate*

## Additional Business and Professions Code Statutes



- 119(a) Displaying or causing or permitting to be displayed or having in possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.
- 119(b) Lending license to any person or knowingly permitting the use thereof by another.
- 119(c) Displaying or representing any license not issued to him/her as being his/her license.
- 119(d) Failing or refusing to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked, or canceled.
- 119(e) Knowingly permitting any unlawful use of a license issued to him/her.
- 119(f) Photographing, photostating, duplicating, or in any way reproducing any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displaying or having in his/her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.
- \* Recommended discipline for 119(a) - (f):  
*Revocation*
- \* Minimum discipline:  
*Revocation stayed with 3 years probation*
- \* Minimum conditions of probation  
*~~4-13~~ 1-14 and others as appropriate*
- 125 Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:
- (a) Allows his/her license to be used by such person.
- (b) Acts as his/her agent or partner.
- \* Recommended discipline:  
*Revocation*
- \* Minimum discipline:  
*Revocation stayed with 3 years probation.*
- \* Minimum conditions of probation  
*~~4-13~~ 1-14 and others as appropriate*

- 125.6 **Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance due to race, color, sex, religion, ancestry, physical handicap, marital status or national origin.**
- \* Recommended discipline:  
*Revocation*
  - \* Minimum discipline:  
*Revocation stayed with three years probation*
  - \* Minimum conditions of probation:  
*~~4-13~~ 1-14 and others as appropriate.*
- 480(a) **Acts Disqualifying Applicant:**  
(See attached Policy Statement on Denial of Licensure.)
- (1) Conviction of a crime.
  - (2) Any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or
  - (3) Any act which if done by a licensee of the business or profession in question would be grounds for suspension or revocation of license.
- 480(c) **Applicant knowingly making a false statement of fact required to be revealed in the application for such license.**
- \* Recommended discipline for 480(a) and (c):  
*Denial of licensure*
- 492 **Successful completion of a court-ordered diversion program (Penal Code) or of an alcohol and drug problem assessment program (Vehicle Code) does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.**
- 493 **The record of the conviction of a crime shall be conclusive evidence only of the fact that the conviction occurred and the board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.**
- 496 **Subversion of licensing examinations.**
- Recommended discipline:  
*Denial of licensure, actual suspension or revocation.*
- 498 **Securing license by fraud, deceit, or misrepresentation.**
- \* Recommended discipline:  
*Denial of licensure, suspension, or revocation.*
- 726 **Sexual abuse, misconduct, or relations with a patient.**
- \* Recommended discipline:  
*Revocation*

810 (a)(1)

**Knowingly presenting or causing to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.**

\* Recommended discipline:

*Revocation*

\*

Minimum discipline:

*Revocation stayed with 3 years probation.*

\*

Minimum conditions of probation:

*~~4-13~~1-14 and others as appropriate.*

810(a)(2)

**Knowingly preparing, making or subscribing any writing with intent to present or use the same, or to allow it to be presented or used in support of any such claim.**

\*

Recommended discipline:

*Revocation*

\*

Minimum discipline:

*Revocation stayed with 3 years probation.*

\*

Minimum conditions of probation:

*~~4-13~~1-14 and others as appropriate.*

820

**Unable to practice profession safely because ability to practice is impaired due to mental illness or physical illness affecting competency.**

\*

Recommended discipline:

*Suspension or revocation*

## Other Situations in which Revocation is the Recommended Penalty



1. Failure to file a notice of defense or to appear at a disciplinary hearing, where the Board has requested revocation.
2. Violation of the conditions of the Board's Probation Program.
3. Substantiated evidence or convictions of physical abuse and/or sexual offenses.
4. Patient neglect by failure to provide competent nursing care.
5. Second offenses unless the respondent can demonstrate that he/she has been rehabilitated.

## Cost Recovery for Revocations and Surrenders



*When the order is revocation or surrender, cost recovery should be included as follows:*

“If and when respondent’s license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$\_\_\_\_\_. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”



# Drug/Alcohol Rehabilitation Criteria



Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

- Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:
  - Chemical-free treatment philosophy
  - Individual and/or group counseling
  - Random, documented biological fluid screening
  - Participation in nurse (or other professionals') support group(s)
  - Education about addictive disease
  - Adherence to a 12-step recovery program philosophy, or equivalent
  - Written documentation of participation in 12-step recovery groups, or equivalent
- For registered nurse licensees, employment in nursing for a minimum of six (6) months with documentation (from the employer) that the employer was aware of the previous drug or alcohol abuse problems. Documentation must substantiate that while employed, there was no evidence of continued alcohol or drug use and that the respondent performed nursing functions in a safe and competent manner.
- For respondents seeking reinstatement of license, employment for a minimum of six (6) months with documentation from the employer that while employed, there was no evidence of alcohol or drug use.

# Mitigation Evidence



The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

- A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.
- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated performance evaluation(s) from respondent's employer.
- F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.
- G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. **An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used.**

# Conditions of Probation and Rationale



The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

The following conditions of probation provide for consumer protection and establish a mechanism to monitor the rehabilitation progress of a probationer.

For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Board of Registered Nursing.

## **PROBATIONARY TERM**

Generally, the Board recommends a minimum of three (3) years probation.

## **PROBATIONARY CONDITIONS**

Probationary conditions are divided into two categories:

- A. Standard conditions that appear in all probation orders; and
- B. Optional conditions that are appropriate to the nature and circumstances of the particular violation.

(Numbers preceding "Conditions of Probation" refer to the probationary conditions and rationale on the following pages.)

# Listing of Probation Conditions



## STANDARD PROBATION CONDITIONS

Introductory Language and Conditions ~~4-431-14~~ are required as follows:

- 1) Obey all Laws
- 2) Comply With Board's Probation Program
- 3) ~~Report in Person~~ Address Change, Name Change, License Status
- 4) ~~Residency or Practice Outside of State~~ Meetings/Interviews
- 5) ~~Submit Written Reports~~ Status of Residency, Practice, or Licensure outside of State
- 6) ~~Function as a Registered Nurse~~ Submit Documentation
- 7) ~~Employment Approval and Reporting Requirements~~ Practice as a Registered Nurse
- 8) ~~Supervision~~ Nursing Practice Approval and Notification Requirements
- 9) ~~Employment Limitations~~ Level of Supervision
- 10) A. Complete a Nursing Course(s) Employment and License Restrictions  
b. Restrictions on Federal Permits: Other Sanctions
- 11) ~~Cost Recovery (Does not apply to Applicants)~~ Complete a Nursing Course(s)
- 12) ~~Violation of Probation~~ Cost Recovery
- 13) ~~License Surrender~~ Violation of Probation
- 14) License Surrender

## OPTIONAL PROBATION CONDITIONS

Conditions 14-~~4925~~ are usually required (in addition to the standard conditions ~~4-431-14~~) if the offense involves alcohol/drug abuse. In cases of mental illness conditions ~~4415~~, 18, and ~~4924~~ are recommended. Any of these optional conditions may be included if relevant to the violation.

- ~~14) Physical Examination~~
- 15) Physical Examination and Treatment

~~13) Participate in Treatment/Rehabilitation Program for Chemical Dependence~~

16) ~~Abstain From Use of Psychotropic (Mood-Altering) Drugs~~ Mental Health Evaluations: Treatment: Therapy and Counseling

17) ~~Submit to Tests and Samples~~ Respondent Fails to Complete Mental Health/Physical Evaluation or Attend Treatment Appointments

18) ~~Mental Health Examination~~ Rule-Out Substance Abuse Assessment

19) ~~Therapy or Counseling Program~~ Clinical Diagnostic Evaluation

20) ~~Actual Suspension of License~~ Participate in Treatment/Rehabilitation Program for Substance Abuse

21) Facilitated Group Support Meetings

22) Abstain From Use of Psychotropic (Mood Altering) Drugs

23) Submit to Tests and Samples

24) Therapy or Counseling Program

25) Actual Suspension of License

## Introductory Language: ~~and Standard Probation Conditions~~



The following introductory language ~~and all standard probation conditions are~~ is to be included in probationary ~~decisions/decisions and orders for registered nurses.~~ Registered nurses who possess Board of Registered Nursing ("Board") certifications i.e. Board listed psychiatric – mental health nurse, nurse midwife, nurse midwife furnishing number, nurse anesthetist, clinical nurse specialist, nurse practitioner, nurse practitioner furnishing number, and public health nurse, shall also have those certifications referenced in the decision and order, when charged in the accusation. For applicants, Condition 11, Cost Recovery, does not apply. For licensees, all standard probation conditions apply. (Note: See alternative introductory language for applicants and reinstatements in next section of guidelines.)



### **~~INTRODUCTORY LANGUAGE FOR ALL ORDERS –~~**

**IT IS HEREBY ORDERED** that Registered Nurse License Number \_\_\_\_\_ issued to Respondent \_\_\_\_\_ is revoked. However, the revocation is stayed and respondent is placed on probation for \_\_\_\_\_ years on the following conditions.

#### Language for Registered Nurses with Board Certifications

It is further ordered that (type of certification and certification number) \_\_\_\_\_ issued to Respondent is revoked. However, the revocation is stayed and respondent's (name the certificates) is placed on probation for \_\_\_\_\_ years on the following conditions.

#### Optional Language for Suspensions

Respondent is suspended from the practice of registered nursing for \_\_\_\_\_. During \_\_\_\_\_ the suspension period, Respondent shall comply with the following probation conditions(s) (list any non-nursing practice related conditions required as part of the Decision and Order):

If Respondent is suspended from practice, and required to comply with any probation condition(s), such probation shall be in addition to any probation term identified in the decision and order. Respondent shall return his or her pocket license to the Board during the period of suspension, and the license shall be returned to Respondent upon termination of the suspension period.

#### Standard Probation Conditions for All Decisions and Orders

#### **SEVERABILITY CLAUSE –**

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

**RATIONALE:** The severability clause is required for all decisions and stipulated agreements where there are conditions of Probation, in order to avoid the possibility of all probation conditions being ~~repealed~~ invalidated upon a successful appeal.

(1) **OBEY ALL LAWS—LAWS -** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by ~~the~~ Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed California Department of Justice state and federal Livescan fingerprint forms, unless previously submitted as part of the licensure application process fingerprint forms and fingerprint fees. Fingerprints shall be submitted within 45 15 calendar days of the effective date of the ~~Decision and Order~~, unless previously submitted as part of the licensure application process.

**CRIMINAL COURT ORDERS:** If Respondent is under criminal court orders by any governmental agency, including probation or parole, and the ~~order is~~ orders are violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation ~~and~~ or petition to revoke probation or both.

OTHER BOARD OR REGULATORY AGENCY ORDERS: If Respondent is subject to concurrent disciplinary order(s) from any other health-care related board or any professional licensing or certification regulatory agency, and violates the order(s), this shall be deemed a violation of probation and may result in the filing of an Accusation and/or Petition to Revoke Probation.

**RATIONALE:** All licensees are responsible for “abiding by ~~the~~ federal, state and local laws” ~~and~~ Licensees are also responsible ~~complying for~~ complying with criminal court orders. If a licensee is subject to other health-care related board or regulatory agency orders, violations of those orders may impact the status of his or her discipline by the Board. should the licensee be subject to court ordered parole or probation. This condition emphasizes the Respondent’s responsibility and ~~it provides~~ specifies the Board’s ~~with a means~~ authority to take more immediate and severe action if ~~another other violation occurs~~. Violations occur. If a licensee whose license is on probation violates other probationary conditions or order they may be unsafe to practice in this state.

**(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM** - Respondent shall fully comply with the conditions of ~~the Probation Program~~ probation established by the Board and all requirements necessary to implement the conditions of probation. Respondent shall cooperate with representatives of the Board in its monitoring and investigation of the ~~Respondent's compliance with the Board's Probation Program conditions of probation.~~ Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion compliance with the conditions of probation, and completion of the probation term, respondent's license shall be fully restored.

**RATIONALE:** *Full compliance with conditions of probation demonstrates the respondent's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.*

**(3) ADDRESS CHANGE, NAME CHANGE, LICENSE STATUS** – Respondent shall inform the Board in writing within 15 calendar days of any change in his or her address of record or legal name change. Respondent shall maintain an active, current license with the Board, including while suspended from practice as a registered nurse, unless otherwise specified by the disciplinary orders.

Any misrepresentation by Respondent of his or her restricted license status to the public shall be a violation of the probation conditions. Upon request by the Board, Respondent shall immediately return his or her registered nurse license, if the license is suspended or placed on probation.

Should Respondent report a lost or stolen registered nurse license and request a duplicate license, he or she shall sign a statement under penalty of perjury explaining the circumstances of the loss of the license. Any misrepresentation of the reason for requesting a duplicate license is a violation of probation. Respondent may not request a duplicate license online.

**RATIONALE:** *Informing the Board of address and name changes is necessary to ensure ongoing Board monitoring and contact with the respondent. Maintaining an active license reinforces the goal of practicing as a registered. Identification of the license as "restricted" prevents use of the license in a capacity that was not approved by the Board. To ensure that license security is maintained, additional measures have been taken to ensure that there is no misrepresentation if a license is lost or stolen.*

**(34) REPORT IN PERSON MEETINGS/INTERVIEWS**- Respondent, ~~during the period of probation,~~ shall appear in person for meetings and shall be available by telephone for ~~at~~ interviews/meetings as directed by the Board. ~~or its designated representatives.~~

**RATIONALE:** *~~This provides a means for the Board representatives to make periodic personal assessments of the respondent, to give guidance and direction determine compliance with probation conditions and to give guidance and directions require the respondent to appear before the Board, if necessary.~~ to licensees on probation.*

**(45) STATUS OF RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE** - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of ~~this the~~ probation time period. Term, except under the following conditions: Respondent's probation is tolled, if and when he or she resides or practices outside of California for more than 30 consecutive calendar days, unless the Board, in its sole discretion, provides written



permission for probation to continue. For purposes of compliance with this section, “toll” means to delay the continuation of the probation term.

The Respondent ~~must~~ shall provide written notice to the Board within 15 calendar days of any change of residency, ~~or whenever he or practiceshe practices as a registered outside nurse outside~~ the state, and within 30 calendar days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states, ~~and United States~~ territories ~~and provinces in Canada where, where~~ he or she has ever been licensed as a registered nurse, vocational nurse, ~~or practical nurse or held any health-care related professional license or certificate.~~ Respondent shall further provide information regarding the status of each license ~~and certificate~~ and any changes in ~~such license the -license or certificate~~ status during the term of probation. Respondent shall inform the Board if he/ ~~or~~ she applies for or obtains a ~~new registered nursing nurse or advanced license practice license or certificate outside of California~~ during the term of probation.

Respondent shall provide a copy of this Decision and Order, Accusation or if applicable Statement of Issues to the nursing regulatory agency in every state, United States territory, and Canadian province in which he or she has ever held a registered nurse license, or any health-care related professional license or certificate.

**RATIONALE:** This ~~e~~nsures that respondents may not complete probation without being fully monitored for their ~~term period of -in probation in~~ California. This further ~~assures~~ ensures that the Board is aware of all licensure outside of California as a ~~professional nurse~~ registered nurse or in any health care related capacity. This also allows coordination with other regulatory agencies to discipline regist4ered nurses, including in Canada. A registered nurse may renew his or her license in California, regardless of the expiration date, if the licensee holds a current, valid, active, and clear registered nurse license in another state, a United States territory, or Canada, pursuant to Title 16, Section 1419.3(b), California Code of Regulations.

**(56) ~~SUBMIT WRITTEN REPORTS- DOCUMENTATION~~** - Respondent, upon request, during the period of probation, shall submit ~~or cause to be submitted~~ documentation including, but not limited to the following:

- (a) Self-report survey
  - (b) LIVESCAN form
  - (c) Data report form
  - (d) Arrest and court records
  - (e) Cost recovery plan
  - (f) Release of confidential information
  - (g) Chemical dependency treatment report
  - (h) Coursework certification of completion
  - (i) Alcoholics Anonymous (AA), Narcotics Anonymous (NA), and nurse support group attendance forms
  - (j) Initial set up forms for random drug testing
1. Upon request, Respondent shall cause to be submitted documentation including, but is not limited to the following:
- (a) Mental health examination and narrative report
  - (b) Physical examination and narrative report
  - (c) Clinical Diagnostic Evaluation and narrative report

- (d) On-going reports for therapy, treatment or rehabilitation programs, group support meetings and/or therapy or counseling
- (e) Work performance evaluation
- (f) Verification of employment

2.

1. ~~Such written reports/declarations and verification of actions~~ Such documentation shall be ~~undersubmitted under~~ penalty of perjury, as required by the Board. ~~These reports/declarations~~ On a case-by-case basis, documents shall be required to contain statements relative to ~~Respondent's~~ compliance with all the conditions of ~~the Board's Probation Program~~ probation and compliance with Board instruction. ~~Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.~~

~~Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.~~

***RATIONALE:*** *This provides the Board with a mechanism for maintaining communication with the respondent between meetings; gathering pertinent information from the respondent; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis. ~~This also allows coordination with other state agencies to discipline registered nurses.~~*

**(67) FUNCTION—PRACTICE AS A REGISTERED NURSE** - Respondent, ~~during the period of probation,~~ shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

Respondent's shall not commit a practice violation resulting in gross negligence or incompetence, as referenced in Sections 2761 and 2762 of the Business and Professions Code, and defined in Title 16, Sections 1442 and 1443 of the California Code of Regulations. Respondent's practice shall be in conformance with the Standards of Competent Performance in Title 16, Section 1443.5 of the California Code of Regulations.

Any practice violation of probation alleged to be gross negligence or incompetence by an expert reviewer of the evidence result in modification or rescinding of employment approval.

For purposes of compliance with the section, “engage in the practice of registered nursing” may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If respondent has not ~~complied with this condition—~~ practiced as a registered nurse during the probationary term, and the respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

***RATIONALE:*** ~~This <sup>P</sup>~~*Provides the Board with an opportunity to monitor the respondent's practice and determine if he/she can perform the functions and duties of a registered nurse in a competent manner. It also prevents the respondent from merely “sitting out” the probation and avoiding the necessity of demonstrating competence and complying with nursing practice related probation conditions. Specifies actions that may be instituted for violation of the condition.*

**(78) EMPLOYMENT— NURSING PRACTICE APPROVAL AND REPORTING NOTIFICATION REQUIREMENTS** - Respondent shall obtain prior written approval from the Board before commencing or continuing any nursing practice related employment, ~~paid or voluntary,~~ volunteer work, education and training that includes patient care, or work in any other capacity where as a registered nurse license is required. Respondent shall comply with any requirements imposed as conditions of approval of employment. ~~Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.~~ Respondent shall provide the Board the names, physical address, mailing address and telephone numbers of all employers and immediate supervisors. Respondent shall give specific written consent that Respondent authorizes the Board and Respondent's employers and supervisors to communicate regarding Respondent's work status, performance, probation monitoring, compliance with, or violations of the conditions of probation

without notice to or participation by Respondent. Any violation of probation related to Respondent's ability to safely provide nursing care may result in medication or rescinding of employment approval and in the filing of an accusation; petition to revoke probation, or both.

Respondent shall provide a copy of this ~~Decision~~ Decision and Order, Accusation, or Statement of Issues or both to his or her employer ~~and immediate supervisors or prospective employer~~ —prior to commencement or continuation of any registered nursing or other health care related employment. As defined in this condition, “employer” means immediate supervisor and nursing administrator, if applicable. Any willful material misrepresentation of the Decision and Order, Accusation, Statement of Issues or both to those who are required to receive it shall be considered a violation of probation. “Willful material misrepresentation” means any falsification of the original document(s) by changing the contents of the document(s).

In addition to the above, ~~Respondent~~ Respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any registered nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any registered nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

***RATIONALE:*** ~~*This condition allows*~~ *allows* the Board to determine the appropriateness of a setting for which the respondent *is providing, or will be providing registered nursing services and to obtain reports relative to the respondent's registered nursing competency.* *Delineates Board action which might be imposed for violations of probation conditions.*

*This condition additionally allows the Board to be informed of any employment, termination, or separation of the respondent from a nursing or other health care related position, e.g., as a licensed vocational nurse, respiratory therapist, certified nursing assistant or home health aide. It includes reporting of employment in health care related services not regulated by the state, e.g., surgical technician or cardiac catheterization technician.*

*The condition also provides the Board with a mechanism for ensuring that the employer providing nursing or other health care-related services is informed of the license status of the respondent so that, if necessary, the work environment can be structured to ensure consumer safety.*

**(89) LEVEL OF SUPERVISION** - Respondent shall obtain prior ~~approval~~ written approval from the Board regarding respondent's level of supervision ~~and/or~~ and/or collaboration before commencing or continuing any employment or volunteer work as a registered nurse, or education and training that includes patient care, or work in any other capacity where a registered nurse license is required. For purposes of this probation condition, “collaboration” means a working association between an advanced practice nurse and a physician.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision ~~and/or~~ and/or collaboration are approved. ~~(e.g., with an advanced practice nurse or physician)~~ are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the ~~hours~~hour's respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each ~~work day~~ workday. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

***RATIONALE:*** *This allows the Board to require appropriate supervision and/or collaboration, to monitor the respondent's registered or advanced practice nursing competency and thus protect consumer safety. The level of supervision or need for advanced practice collaboration will be determined by the Board at probation meetings.*

**(910(a)) EMPLOYMENT AND LICENSE LIMITATIONS RESTRICTIONS** - Respondent shall not work for a nurse's registry, ~~in any private duty position as a registered nurse~~, a temporary nurse placement agency, or a traveling nurse agency, ~~or for an in-house nursing pool~~.

Respondent shall not work in any private duty position or for an in-house nursing pool in any health care setting as a registered nurse. Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

Respondent shall not ~~work for~~ conduct home visits for a ~~licensed~~ home health agency, hospice, or in any other registered nurse occupation where home visits are required, as a visiting nurse unless the level of registered nursing supervision, number of home visits, and other protections restrictions deemed necessary for home visits have been approved in writing by the Board. ~~Respondent shall not work in any other registered nursing occupation where home visits are required.~~

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict ~~Respondent~~ Respondent from supervising licensed vocational nurses ~~and/or~~ and/or unlicensed assistive personnel or both on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

~~Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.~~

~~If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work. Respondent may not work or continue to work for more than 40 hours per week, or work shifts in excess of eight hours during a 24 hour period, without prior written approval by the Board.~~

**10(b) RESTRICTIONS ON FEDERAL PERMITS; OTHER SANCTIONS** – Respondent is restricted from applying for a new Drug Enforcement Agency (DEA) permit, if Respondent

violated applicable laws in the use of his or her nurse practitioner or nurse midwife furnishing number.

Restrictions shall be imposed, when applicable, on any previously approved nurse practitioner or nurse midwife furnishing number or DEA permit.

Respondent shall be in violation of probation if he or she seeks or continues employment in any health-care setting where he or she is excluded under federal Medicare and state Medic-Cal laws.

***RATIONALE:*** *The condition prevents the respondent from engaging in the practice of registered nursing in situations where there is no close supervision and/or where the respondent could have undue authority over others and access to controlled substances. If the respondent is working through a private duty or temporary placement arrangement, there is no assurance that the contracting facility or contracting family is aware of the nurse's probation. ~~Home health agencies are licensed by the state, and are staffed by registered nurse supervisors.~~ On a case-by-case basis, respondents may be permitted to provide home care under specified conditions. ~~RNs~~ Registered nurses disciplined by the Board may not teach approved CE courses pursuant to Section 1457(a)(1)(A), Title 16, California Code of Regulations, while on probation. If Respondent is a nurse practitioner or nurse midwife with a furnishing number and DEA registration number and permit, and the basis of discipline involves violations in the use of the furnishing number, the Board may impose restrictions on applying for or using a furnishing number and DEA permit.*

**(401) COMPLETE A NURSING COURSE(S)** - Respondent, at his or her own expense, shall enroll in and successfully complete a course(s) relevant to the practice of registered nursing within a time frame determined by the Board but no later than six months prior to the end of his or her probationary term. Such required courses shall have prior approval by the Board.

~~Respondent shall obtain prior approval from the Board before enrolling in the course(s).~~ Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to ~~the~~ Respondent after photocopying them for its records.

***RATIONALE:*** *This condition permits the Board to require the respondent to remediate deficiencies in knowledge ~~which that~~ affected or may affect his/her practice of registered nursing. This is necessary in gross negligence or incompetence as well as alcohol/drug abuse cases.*

**(412) COST RECOVERY** - Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$\_\_\_\_\_. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If ~~†~~Respondent has not complied with this condition ~~during the probationary term~~, and ~~†~~Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may restructure the payment plan or grant an extension of the ~~†~~Respondent's probation ~~period term or both~~ up to one year without further hearing in order to provide Respondent with sufficient time to comply with this condition. During the one year extension, all original conditions of probation ~~will~~ shall apply.

This condition shall not apply to initial applicants for licensure as registered nurse.

**(4213) VIOLATION OF PROBATION** - If a ~~†~~Respondent violates the conditions of his ~~/ or~~ her probation, the Board after giving the ~~†~~Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation ~~/ or~~ suspension) of the ~~†~~Respondent's license, Board certification or both.

If ~~during the period of probation~~, an accusation or petition to revoke probation has been filed against ~~†~~Respondent's license, Board certification or both ~~or~~, or the Attorney General's Office has been requested to prepare an file an accusation or petition to revoke ~~probation probation against the respondent's license~~, the probationary ~~period shall~~ term shall automatically be extended and shall not expire until the accusation or petition to revoke probation has been acted upon by the Board.

**(4314) LICENSE SURRENDER** - ~~During respondent's term of probation, if he or she ceases~~ Respondent ceases practicing registered nursing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, ~~†~~Respondent may surrender his or her license to the Board. The Board ~~reserves the right to evaluate~~ shall evaluate ~~†~~Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Such surrender shall be accomplished through a written stipulated agreement, without the filing of an accusation or petition to revoke probation, and without further hearing. Upon ~~formal acceptance of the tendered license and will certificate adoption of the stipulated agreement and formal acceptance of the tendered license and will certificate~~, ~~†~~Respondent will no longer be subject to the conditions of probation.

Surrender of ~~†~~Respondent's license shall be considered a disciplinary action and shall become a part of ~~†~~Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- (1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- (2) One year for a license surrendered for a mental or physical illness.



# Optional Probation Conditions



Listed below are optional conditions of probation that the board would expect to be included in any Proposed Decision or Stipulation, as appropriate, in cases in which an applicant or licensee is placed on probation which is not due to a substance abuse problem.

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**(1415) PHYSICAL EXAMINATION- EVALUATION AND TREATMENT** - Within 45 days of the effective date of this decision, respondent, at his/her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

Within 45 days of the effective date of the Decision and Order

Respondent shall undergo one or more physical evaluations that assess Respondent's physical condition and capability to perform the duties of a registered nurse, including a determination as set forth below in Condition \_\_\_\_\_, "Rule-Out Substance Abuse Assessment." Each evaluation shall be conducted by a licensed physician, nurse practitioner, or physician assistant approved by the Board. The type of evaluator and specialty of evaluator shall be determined by the Board. An evaluator may not have current or pending discipline with his or her licensing board or agency. An evaluator shall have no prior or current business or personal relationship with Respondent, or other relationship that could reasonably be expected to compromise the ability of the evaluator to render fair and unbiased reports to the Board. All costs for evaluations are the responsibility of the Respondent.

Respondent shall sign a release of information form to allow each evaluator to communicate written and verbal information to the Board. The release shall also permit each evaluator to review any prior physical evaluation(s) and other documentation deemed relevant by the Board. Respondent shall provide a copy of this Decision and Order, and of any Accusation or Statement of Issues in the Decision and Order, to each evaluator prior to the evaluation.

Respondent shall ensure that each evaluator submits a written report to the Board within thirty (30) calendar days after completion of each evaluation. Each report shall include a written assessment of the Respondent's ability to practice safely as a registered nurse, and must include a comprehensive history and physical evaluation, and relevant laboratory data, if indicated.

## **A – Treatment Recommendations**

Each physical evaluation report submitted by the evaluator shall include whether there are recommendations for Respondent to undergo treatment by a licensed treatment professional(s). Within ten (10) calendar days of notification of such a recommendation, Respondent shall provide the Board the name and qualifications of each selected treatment professional. The treatment professionals shall have prior approval by the Board, and shall



have no current or pending discipline with his or her licensing board or agency. All costs for treatment are the responsibility of the Respondent.

Respondent shall sign a release of information form to allow each treatment professional to communicate written and verbal information to the Board. The release shall also permit each treatment professional to review any prior physical evaluation(s) or report(s) from treatment professionals, and other documentation determined by the Board to be helpful. Respondent shall provide a copy of this Decision and Order, and of any pleading referenced in the Decision and Order, to each treatment professional.

Respondent shall ensure that each treatment professional submit a written report to the Board within ten (10) calendar days of the treatment appointments. All treatment reports shall include, but not be limited to, Respondent's diagnosis, prognosis, any prescribed medication, and recommendations for on-going treatment. Respondent shall undergo and continue treatment by each treatment professional until the treatment professional determines that treatment is no longer considered necessary. Any determination that treatment is no longer necessary shall be stated in writing to the Board.

### **B – RESPONDENT UNSAFE/UNABLE TO PRACTICE – BOARD ACTION TAKEN**

~~If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.~~

If the health care professional concludes that the Respondent is unable to practice safely as a registered nurse, he or she shall immediately notify the Board by telephone within 24 hours. If Respondent is unsafe/unable to practice, the Board shall notify by telephone and in writing to immediately cease practice, and Respondent shall not resume practice until and unless notified by the Board in writing.

~~If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.~~

*RATIONALE: This condition permits the Board to require the Respondent to obtain a physical evaluation(s), and treatment for physical problems/disabilities which could affect registered nursing practice and/or advanced practice nursing. The physical evaluation(s) can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse. This condition protects the public if the physical evaluation(s), or treatment concludes that the Respondent is not safe to practice, by immediately requiring Respondent to cease his or her practice. This condition further protects the public by imposing discipline through suspending the Respondent's practice as a registered nurse and under any Board granted certification. Upon the filing of an Accusation and/or Petition to Revoke Probation.*

## **(16) MENTAL HEALTH EVALUATION; TREATMENT; THERAPY AND COUNSELING**

Within 45 days of the effective date of the Decision and Order

Respondent shall undergo one or more psychological, neuropsychological, psychiatric and/or other mental health evaluations. Each evaluation shall be conducted by a licensed mental health professional approved by the Board. The type of mental health professional (evaluator) and specialty of evaluator shall be determined by the Board. An evaluator may not have prior, current, or pending discipline with his or her licensing board or agency. An evaluator shall have no prior or current business or personal relationship with respondent, or other relationship that could reasonably be expected to compromise the ability of the evaluator to render fair and unbiased reports to the Board. All costs for evaluations are the responsibility of the Respondent.

Respondent shall sign a release of information form to allow each evaluator to communicate written and verbal information to the Board. The release shall also permit each evaluator to review any prior mental health evaluation(s) and other documentation determined by the Board to be helpful. Respondent shall provide a copy of this Decision and Order, and of any pleading referenced in the Decision and Order, to each evaluator prior to the evaluation.

Respondent shall ensure that each evaluator submit a written report to the Board within thirty (30) calendar days after completion of each evaluation. Each report shall include a written assessment of the Respondent's ability to practice safely as a registered nurse, including as a registered nurse with advanced practice responsibilities, if so credentialed, and must include a history and physical, relevant laboratory data, and psychometric testing, if indicated.

### **A – Treatment, Therapy and Counseling Recommendations**

Each mental health report submitted by the evaluator shall include recommendations for Respondent to undergo treatment, therapy and counseling by a licensed treatment professional(s). Within ten (10) calendar days of notification of such a recommendation, Respondent shall provide the Board the name and qualifications of each selected treatment professional. The treatment professionals shall have prior approval by the Board, and shall have no prior, current, or pending discipline with his or her licensing board or agency. All costs for treatment, therapy and counseling are the responsibility of the Respondent.

Respondent shall sign a release of information form to allow each treatment professional to communicate written and verbal information to the Board. The release shall also permit each treatment professional to review any prior mental health evaluation(s), report(s) from treatment professionals, and other documentation determined by the Board to be helpful. Respondent shall provide a copy of this Decision and Order, and of any pleading referenced in the Decision and Order, to each treatment professional.

Respondent shall ensure that each treatment professional submit a written report to the Board within ten (10) calendar days of the treatment appointments. The frequency of the appointments shall be no more than weekly and no less than every three months. All treatment reports shall include, but not be limited to, Respondent's diagnosis, prognosis, any prescribed medication, and recommendations for on-going treatment. Respondent shall undergo and continue treatment by

each treatment professional until the treatment professional determines that treatment is no longer considered necessary. Any determination that treatment is no longer necessary shall be stated in writing to the Board.

## **B – Respondent Unsafe/Unable to Practice or Has Adverse Change in Mental Status –**

### **Board Action Taken**

If the evaluator or the treatment professional conclude that Respondent is unable to practice safely as a registered nurse or as an advanced practice nurse, or that Respondent has had an adverse change in mental status resulting in the inability to practice safely as a registered nurse or as an advanced practice nurse, the evaluator or treatment professional shall immediately notify the Board and Respondent by telephone. If Respondent is unsafe/unable to practice, the Board shall notify Respondent in writing to immediately cease practice, and Respondent shall not resume practice until and unless notified by the Board in writing.

### **17. Respondent Fails to Complete Mental Health/Physical Evaluation or Attend Treatment Appointments**

If Respondent is required under the terms of his or her probation to complete the mental health and/or physical evaluation(s) and fails to complete such evaluations(s) during the specified time period, or fails to attend treatment appointments, Respondent shall provide to the Board documentary mitigation evidence demonstrating a good faith effort to have the evaluation(s) or treatment(s) during the specified time period. If adequate documentary evidence is received, the Board may, in its discretion, determine that Respondent has not violated the probation conditions.

If Respondent does not provide adequate mitigation evidence demonstrating a good faith effort to have the evaluation(s) or treatment(s) during the specified time period, the Respondent shall be deemed to be unsafe/unable to practice. The Board shall notify Respondent in writing to immediately cease practice, and Respondent shall not resume practice until Respondent has completed the evaluation or attended the treatment appointment and been notified by the Board in writing that he or she may resume the practice of nursing.

***RATIONALE:** This condition permits the board to require Respondent to obtain appropriate treatment and counseling for mental health problems which could affect registered nursing practice and/or could lead to relapse of a chemical dependency problem. This condition protects the public if the mental health assessment determines that Respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending Respondents practice if he or she fails to comply with the mental health assessment requirement.*

### **18. Rule-Out Substance Abuse Assessment**

If the examiner conducting the physical and/or mental health examination determines that the respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then the respondent must further comply with the following additional terms and conditions of probation:

- A. PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE.(Condition #20)
- B. ABSTAIN FROM USE OF ALCOHOL, AND OTHER MOOD ALTERING DRUGS(Condition #22)

### C. PARTICIPATE IN RANDOM BIOLOGICAL FLUID TESTING/DRUG SCREENING(Condition #23)

RATIONALE: In those instances where there is little or no evidence of substance use, but substance abuse is possible (e.g. cases with evidence of only controlled substance charting discrepancies, the sale and distribution of illegal drugs, drugs apparently obtained for another person, etc.), the use of "rule-out" language, in lieu of imposing all chemical dependency related conditions, may be indicated. This option utilizes two conditions to rule-out chemical dependency: the Physical Evaluation condition and Mental Health Evaluation; Treatment; Therapy; and Counseling condition. Following is recommended rule-out condition. Should Respondent be determined to be chemically dependent through a physical and/or mental health evaluation, all other chemical dependency conditions are invoked.

#### 19. Clinical Diagnostic Evaluation

Within forty five (45) days of the effective date of the Decision and at any time upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. Respondent shall prove the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within ten (10) days from the date the evaluation was completed, unless an extension, not to exceed thirty (30) days, is granted to the evaluator by the Board. Cost of such evaluation shall be paid by the Respondent.

Respondent is ordered to cease any practice of psychology, beginning on the effective date of the Decision, pending the results of the clinical diagnostic evaluation. During this time, Respondent shall submit to random drug testing at least two (2) times per week. At any other time that Respondent is ordered to undergo a clinical diagnostic evaluation, he or she shall be ordered to cease any practice of nursing for minimum of one month pending the results of a clinical diagnostic evaluation and shall, during such time, submit to drug testing at least two (2) times per week.

Upon any order to cease practice, Respondent shall not practice nursing until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least one-month of negative drug test results. Respondent shall comply with any terms or conditions made by the Board as a result of the clinical diagnostic evaluation.

**NOTE:** This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.

**RATIONALE:**—This condition permits the Board to require the +Respondent to obtain a appropriate physical evaluation(s), and treatment for physical problems/disabilities which could affect registered nursing practice and/or advanced practice nursing. The physical examination evaluation(s) can also be conducted to ensure that there is no physical evidence of alcohol/drug abuse. This condition protects the public if the physical examination evaluation(s), or treatment determines concludes that the +Respondent is not safe to practice, by immediately requiring Respondent to suspending cease his or her practice. This condition further protects the public by imposing discipline through immediately suspending the +Respondent's practice as a registered nurse and under any Board granted certification, if he or she fails to comply with the physical examination requirement. Upon the filing of an Accusation and/or Petition to Revoke Probation.

**(4520) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE SUBSTANCE ABUSE** - Respondent, at his/her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration or an equivalent program as approved by the Board or its designee. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

*NOTE: This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.*

**(21) FACILITATED GROUP SUPPORT MEETINGS** - ~~Based on Board recommendation,~~ Each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. ~~If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added.~~ Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

*NOTE: This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.*

~~**RATIONALE:** This condition permits the Board to require the respondent to obtain appropriate treatment, within a specified time period, for problems which could affect her/his registered nursing practice and provides for continued involvement in a support system. The Board supports the need for participation in an ongoing recovery program for a successful recovery from chemical dependency or substance abuse.~~

**(4622) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS** - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

**NOTE:** This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.

**RATIONALE:** *Abstinence from mood altering substances (alcohol/drugs) is necessary for compliance with the Board's Probation Program and to ensure successful rehabilitation. Abstinence from any psychotropic drug is required to prevent the substitution of one addicting substance with another.*

**(1723) SUBMIT TO TESTS AND SAMPLES** - Respondent, at his/her expense, shall ~~participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board.~~

Option A: ...be randomly alcohol and/or drug tested under a program approved by the Board. The length of time and frequency will be subject to approval by the Board. When determining the frequency of testing, the Board or its designee shall give consideration to the following: the licensee's history, the documented length of sobriety/time that has elapsed since substance use, the recommendation of the clinical evaluator, the scope of pattern of use, the licensee's treatment history; and the nature, duration and severity of substance abuse.

Option B: ...be subject to a minimum of one-hundred and four (104) random tests per year within the first year of probation, and a minimum of fifty (50) random tests per year thereafter, for the duration of the probationary term.

-The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

~~If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.~~

~~If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.~~



**NOTE:** This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.

**RATIONALE:** This condition provides documentation that the respondent is substance or chemical free. It provides the Board with a mechanism through which to require additional laboratory analyses for the presence of narcotics, alcohol, and/or dangerous drugs when the respondent appears to be in violation of the conditions of probation or appears to be under the influence of mood altering substances. This ~~condition protects~~ condition protects the public by giving the Board the discretion to suspend respondent from practice based on the use of any substance that is not legally authorized. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the drug screening requirement.

~~(18) **MENTAL HEALTH EXAMINATION** - The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine his/her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.~~

~~If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.~~

~~If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.~~

~~**RATIONALE:** This condition permits the board to require the respondent to obtain appropriate treatment and counseling for mental health problems which could affect registered nursing practice and/or could lead to relapse of a chemical dependency problem. This condition protects the public if the mental health examination determines that the respondent is not safe to practice by immediately suspending his or her practice. This condition further protects the public by immediately suspending the respondent's practice if he or she fails to comply with the mental health examination requirement.~~

**(1924) THERAPY OR COUNSELING PROGRAM** - Respondent, at his/her expense, shall participate in an on-going counseling program until such time as the Board releases him/her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

**NOTE:** This condition is to be used in all cases where conditions of the Uniform Standards Related to Substance Abuse are required.

**RATIONALE:** This condition permits the Board to require the respondent to obtain appropriate treatment and counseling for mental health or chemical dependency problems which could affect her/his nursing practice.

**(2025) ACTUAL SUSPENSION OF LICENSE** - Respondent is suspended from the practice of registered nursing for \_\_\_\_ months (period of time not to exceed one year) beginning the effective date of this decision.

During the suspension period, all probation conditions are in full force and effect except those relating to actual nursing practice. This period of suspension will not apply to the reduction of this probationary time period.

**RATIONALE:** Business and Professions Code Section 2759(c) gives the Board of Registered Nursing authority to: "Suspend licensee's right to practice nursing for a period not exceeding one year" as a mode of discipline for registered nurses found guilty of violating the Nursing Practice Act.

*It is the intent of the Board of Registered Nursing to assure safe nursing practice and rehabilitate rather than to punish. As part of probation, the public may be better protected if the registered nurse is suspended from the practice of nursing.*



## **Board Standards for Administration of Uniform Standards Related to Nurses Who Are On Probation Due To a Substance Abuse Problem**

The Board shall adhere to following standards in its administration of its probation program for licensees who are subject to the Uniform Standards Related to Substance Abuse. These standards are not guidelines and shall be followed in all instances, except that the Board may impose more restrictive conditions if necessary to protect the public. Whether individual conditions are ordered, however, is within the discretion of the Board.

### **Clinical Diagnostic Evaluations:**

Whenever a licensee is ordered to undergo a clinical diagnostic evaluation, the evaluator shall be a licensed practitioner who holds a valid, unrestricted license to conduct clinical diagnostic evaluations, and has three (3) years experience in providing evaluations of health care professionals with substance abuse disorders. The evaluator shall be approved by the Board, and unless permitted by the Board or its designee, shall be a California-licensed psychologist or physician and surgeon. The evaluations shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations.

### **Clinical Diagnostic Evaluation Report:**

The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether the licensee has a substance abuse problem, whether the licensee is a threat to himself or herself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to the licensee's rehabilitation and safe practice.

The evaluator shall not have had a financial, personal, business or other relationship with the licensee within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation.

If the evaluator determines during the evaluation process that a licensee is a threat to himself or herself or others, the evaluator shall notify the board within 24 hours of such a determination.

For all evaluations, a final written report shall be provided to the board no later than ten (10) days from the date the evaluator is assigned the matter unless the evaluator requests additional information to complete the evaluation, not to exceed 30 days.

The Board shall review the clinical diagnostic evaluation to help determine whether or not the licensee is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed on the licensee based on the application of the following criteria:

License type, licensee's history, documented length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse problem, and whether the licensee is a threat to himself or herself or others.

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When determining if the licensee should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

### **Facilitated Group Support Meetings:**

If the board requires a licensee to participate in facilitated group support meetings, either because it is the decision of the Board or it is within the discretion of the Board staff when determining the nature of group support meetings, the following shall apply:

1. When determining the frequency of required facilitated group meeting attendance, the board shall give consideration to the following:
  - the licensee's history;
  - the documented length of sobriety/time that has elapsed since substance use;
  - the recommendation of the clinical evaluator;
  - the scope and pattern of use;
  - the licensee's treatment history; and,
  - the nature, duration, and severity of substance abuse.
2. Group Meeting Facilitator Qualifications and Requirements:
  - a. The meeting facilitator must have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
  - b. The meeting facilitator must not have had a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
  - c. The group meeting facilitator shall provide to the board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
  - d. The facilitator shall report any unexcused absence within 24 hours.

### **Work Site Monitor Requirements:**

If the Board determines that a worksite monitor is necessary for a particular licensee, the worksite monitor must meet the following requirements to be considered for approval by the Board:

The worksite monitor shall not have a current or former financial, personal, or familial relationship with the licensee, or other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board. If it is impractical for anyone but the licensee's employer to serve as the worksite monitor, this requirement may be waived by the Board; however, under no circumstances shall a licensee's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor's license scope of practice shall include the scope of practice of the licensee who is being monitored or be another health care professional if no monitor with like scope of practice is available.

The worksite monitor shall have an active unrestricted license, with no disciplinary action within the last five (5) years.

The worksite monitor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to monitor the licensee as set forth by the Board.

The worksite monitor must adhere to the following required methods of monitoring the licensee:

- a) Have face-to-face contact with the licensee in the work environment on as frequent a basis as determined by the Board, but at least once per week.
- b) Interview other staff in the office regarding the licensee's behavior, if applicable.
- c) Review the licensee's work attendance and behavior.

Reporting by the worksite monitor to the Board shall be as follows:

Any suspected substance abuse must be orally reported to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. A written report shall be submitted to the Board within 48 hours of occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; worksite monitor's name and signature; worksite monitor's license number; worksite location(s); dates licensee had face-to-face contact with monitor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

The licensee shall complete the required consent forms and sign an agreement with the worksite monitor and the Board to allow the Board to communicate with the worksite monitor.

### **Major and Minor Violations: [Uniform Standard # 9, 10]**

If a licensee commits a major violation, the Board shall order the licensee to cease any practice of psychology, inform the licensee that he or she has been so ordered and that he or she may not practice unless notified by the Board, and refer the matter for disciplinary action or other action as determined by the Board.

Major Violations include, but are not limited to, the following:

1. Failure to complete a board-ordered program;
2. Failure to undergo a required clinical diagnostic evaluation;
3. Committing multiple minor violations of probation conditions and terms;
4. Treating a patient while under the influence of drugs or alcohol;
5. Committing any drug or alcohol offense that is a violation of the Business and Professions Code, or other state or federal law;
6. Failure to obtain biological testing for substance abuse when ordered;
7. Testing positive for a banned substance;
8. Knowingly using, making, altering or possessing any object or product in such a way as to defraud a drug test designed to detect the presence of alcohol or a controlled substance.

If a licensee commits a minor violation, the Board shall determine what action is appropriate.

Minor Violations include, but are not limited to, the following:

1. Failure to submit required documentation in a timely manner;
2. Unexcused ~~attendance~~ absence from ~~at~~ required meetings;
3. Failure to contact a monitor as required;
4. Any other violations that do not present an immediate threat to the licensee or to the public.

## **DRUG TESTING STANDARDS**

If a licensee tests positive for a banned substance, the Board shall order that the licensee cease any practice of nursing, and contact the licensee to inform him or her that he or she has been ordered to cease practice and that he or she may not practice until the Board determines that he or she is able to safely practice. The Board shall also notify the licensee's employer that the licensee has been ordered to cease practice, and that he or she may not practice until the Board determines that he or she is able to safely practice.

The Board shall determine whether the positive alcohol or drug test is, in fact, evidence of prohibited use, a major violation. If not, the Board shall immediately lift the cease practice order.

The following drug testing standards shall apply to each licensee subject to drug testing:

**Option A:** Be randomly alcohol and/or drug tested under a program approved by the Board. The length of time and frequency will be subject to approval by the Board. When determining the frequency of testing, the Board or its designee shall give consideration to the following: the licensee's history, the documented length of sobriety/time that has elapsed since substance use, the recommendation of the clinical evaluator, the scope of pattern of use, the licensee's treatment history and the nature, duration, and severity of substance abuse.

**Option B:** Licensees shall be randomly alcohol or drug tested at least 104 times per year for the first year or probation, and at any time as directed by the board. After the first year, licensees who are practicing, shall be randomly alcohol or drug tested at least 50 times per year, and at any time as directed by the board.

1. Alcohol or drug testing may be required on any day, including weekends and holidays.
2. Except when directed, the scheduling of alcohol or drug tests shall be done on a random basis, preferably by a computer program.
3. Licensees shall be required to make daily contact as directed to determine if alcohol or drug testing is required.
4. Licensees shall be alcohol or drug tested on the date of notification as directed by the board.
5. Specimen collectors must either be certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the U.S. Department of Transportation.
6. Specimen collectors shall adhere to the current U.S. Department of Transportation Specimen Collection Guidelines.
7. Testing locations shall comply with the Urine Specimen Collection Guidelines published by the U.S. Department of Transportation, regardless of the type of test administered.

8. Collection of specimens shall be observed.

9. Prior to vacation or absence, alternative alcohol or drug testing location(s) must be approved by the board.

10. Laboratories shall be certified and accredited by the U.S. Department of Health and Human Services.

A collection site must submit a specimen to the laboratory within one (1) business day of receipt. A chain of custody shall be used on all specimens. The laboratory shall process results and provide legally defensible test results within seven (7) days of receipt of the specimen. The Board will be notified of non-negative test results within one (1) business day and will be notified of negative test results within seven (7) business days.

# Recommended Language for Applicants and Reinstatements

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In order to provide clarity and consistency in its decisions, the Board of Registered Nursing recommends the following language in proposed decisions or stipulated agreements for exam applicants, endorsement applicants [those who hold a license in another state(s)], and for petitioners for reinstatement who are issued a license that is placed on probation.

- **Exam applicants who are placed on probation:**

“The application of respondent \_\_\_\_\_ for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of \_\_\_\_\_ years on the following conditions:”

- **Endorsement applicants who are placed on probation:**

“The application of respondent \_\_\_\_\_ licensure is hereby granted and a license shall be issued to respondent upon successful completion of all licensing requirements. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of \_\_\_\_\_ years on the following conditions:”

- **Reinstatement of licensure with conditions of probation:**

“The application of respondent \_\_\_\_\_ for reinstatement of licensure is hereby granted. A license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of \_\_\_\_\_ years on the following conditions:”

It is important to note that in many cases, petitioners for reinstatement have not practiced registered nursing in the State Of California for eight years. They must retake the licensing exam before they are eligible for licensure per Section 2811 of the Business and Professions Code. This information must be provided to the Administrative Law Judge so that he/she can include: “Upon successful completion of the licensure examination, a license shall be issued to respondent.”

In addition to the examination requirement, it may be appropriate to require completion of comprehensive education courses prior to resuming practice. Recommended language: “The respondent shall enroll in and successfully complete a refresher course or equivalent set of courses as approved by representatives of the Board. The respondent is suspended from practice until the required course work is successfully completed, but may use his/her license for the limited purpose of completing clinical requirements of the required coursework.”

**NOTE:** If cost recovery was ordered in the revocation or surrender of a license and the cost recovery has not been paid in full by petitioner, a probation condition requiring payment of original cost recovery on a payment plan must be included in the reinstatement and decision.

## **Time Frames for Petitions for Reinstatement and Modification of Penalty**



Pursuant to Business and Professions Code, Section 2760.1(a), time frames for petitions for reinstatement and modification of penalty are as follows:

- At least three years for reinstatement of a license revoked for unprofessional conduct. (The board may, in its sole discretion, specify in its order a lesser period, but not less than one year.)
- At least two years for early termination of a probation period of three years or more.
- At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

### **Recommended Language for Cost Recovery for Revocations and Surrenders**



*When the order is revocation or surrender, cost recovery should be included as follows:*

“If and when respondent’s license is reinstated, he or she shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code Section 125.3 in the amount of \$\_\_\_\_\_. Respondent shall be permitted to pay these costs in a payment plan approved by the Board. Nothing in this provision shall be construed to prohibit the Board from reducing the amount of cost recovery upon reinstatement of the license.”

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## **POLICY STATEMENT ON DENIAL OF LICENSURE**

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The California Board of Registered Nursing protects the public by screening applicants for licensure in order to identify potentially unsafe practitioners. Statutory authority for denial of licensure is set out in Business and Professions Code Sections 480-487, 492, 493, 496, 810, 820-828, 2750-2765, and 2795-2797.

The law provides for denial of licensure for crimes or acts which are substantially related to nursing qualifications, functions, or duties. A crime or act meets this criterion if, to a substantial degree, it evidences present or potential unfitness to perform nursing functions in a manner consistent with the public health, safety, or welfare (California Code of Regulations, Section 1444).

The Board may deny licensure on the basis of:

- Conviction of crime substantially related to the practice of nursing.
- Any act involving dishonesty, fraud, or deceit with intent to substantially benefit self or another or to substantially injure another.
- Any act which is grounds for revocation of a license.
- Making a false statement on the application for license.
- Breach of examination security.

### **Convictions**

The Board considers most convictions involving sex crimes, drug crimes, and crimes of violence to be substantially related to nursing practice. Board regulations list examples of such crimes or acts to include, but not be limited to:

- Conviction of child abuse.
- Violation of Nursing Practice Act.
- Conviction as a mentally disordered sex offender.
- Crime or act involving narcotics, dangerous drugs, or dangerous devices.
- Conviction of assault and/or battery.

### **Rehabilitation**

If the Board determines that an act or crime is substantially related to the practice of nursing, then it is the responsibility of the applicant to present sufficient evidence of rehabilitation.

When considering denial of license, the Board takes into account the following criteria to evaluate the rehabilitation of the applicant. (California Code of Regulations, Section 1445).

1. Nature and severity of the acts or crimes.
2. Additional subsequent acts.
3. Recency of acts or crimes.
4. Compliance with terms of parole, probation, restitution, or other sanctions.
5. Evidence of rehabilitation submitted by applicant.

The Board has developed the following list of suggested evidence of rehabilitation for applicants whose licensure is in question.

It should be noted that the board applies the same denial criteria for applications for interim permits and temporary license as it uses for permanent licensure.

In summary, the Board of Registered Nursing screens applications fairly but cautiously, applying the above criteria. Schools of nursing are encouraged when counseling prospective nursing students to make them aware that there could be potential licensure problems due to serious acts or convictions as described above. In this manner, students have the opportunity to explore other career options prior to investing substantial time in a nursing program if it appears that a prior serious act or conviction may jeopardize licensure due to its substantial relationship to the practice of nursing.

### **EVIDENCE OF REHABILITATION**

At the time of application for licensure, the burden of proof lies with the applicant to demonstrate sufficient competent evidence of rehabilitation to establish fitness to perform nursing functions in a manner consistent with public health, safety, and welfare. The following list itemizes types of evidence which the applicant should consider providing to the Board. All items should be mailed directly to the Board by the individual or agency who is providing information about the applicant.

1. Copies of court documents pertinent to conviction, including documents specifying conviction and sanctions, and proof of completion of sanction.
2. Letter from applicant describing underlying circumstances of arrest and conviction record as well as any rehabilitation efforts or changes in life since that time to prevent future problems.
3. Letters of reference from nursing program instructors concerning attendance, participation, and performance in nursing program.
4. Letters of reference from past and/or current employers.
5. Letters from recognized recovery programs attesting to current sobriety and length of time of sobriety if there has been a history of alcohol or drug abuse.
6. A current mental status examination by a clinical psychologist or psychiatrist. The evaluation should address the likelihood of similar acts or convictions in the future, and should speak to the suitability of the registered nursing profession for the applicant.
7. Letters of reference from other knowledgeable professionals, such as probation or parole officers.
8. Copy of Certificate of Rehabilitation or evidence of expungement proceedings.
9. Evidence of compliance with and completion of terms of probation, parole, restitution, or any other sanctions.
10. For endorsement applicants, copies of:
  - a. Formal accusation and determination of other state,
  - b. Copies of evidence presented to other state in order to obtain reinstatement of license or reduction or penalty,
  - c. Terms of probation and evidence of current compliance if currently on probation in another state.

**STATUTORY AUTHORITY FOR DENIAL OF LICENSURE**  
**(Summarized Version of Business & Professions Code)**

**Grounds for Denial**

- 480 (a) Board may deny a license on the basis of:
- (1) Conviction of a crime, after time for appeal, irrespective of a subsequent order under Section 1203.4 of the Penal Code.
  - (2) Any act involving dishonesty, fraud or deceit with intent to substantially benefit self or another, or substantially injure another.
  - (3) Any act which is grounds for suspension or revocation of registered nurse's license.
- (b) May not deny license solely on basis of felony conviction if there is certificate of rehabilitation. (Penal Code 4852.01)
- (c) May deny license if applicant knowingly made false statement of fact required in application.

**Criteria for Related Crimes Required**

- 481 Board must have criteria to assist in considering denial, revocation, suspension of license in order to determine whether a crime or act is substantially related to nursing qualifications, functions, or duties. (BRN criteria specified in Section 1444 of California Code of Regulations).

**Criteria for Rehabilitation Required**

- 482 Board must have criteria to evaluate rehabilitation when considering (a) denial or (b) suspension or revocation of license. Board must consider all competent evidence of rehabilitation furnished by applicant or licensee. (Section 1445 of California Code of Regulations).

**Attestations of Good Moral Character Not Required**

- 484 No applicant can be required to submit attestations of good moral character.

**Procedure for Board Upon Denial**

- 485 Upon denial the Board must (a) serve a statement of issues or (b) notify the applicant of the denial stating the reasons and the right to a hearing. The right to a hearing is waived if a written request is not received within 60 days.

**Reapplication After Denial**

- 486 Upon denial the Board must inform the applicant of the earliest date for reapplication, state that all competent evidence of rehabilitation will be considered upon reapplication, and send a copy of the criteria for rehabilitation.
- 487 If a hearing is requested it must be conducted within 90 days of request, except for OAH extensions or at applicant's request.
- 492 Successful completion of any diversion program under the Penal Code or successful completion of an alcohol and drug problem assessment program under the Vehicle Code does not prohibit the Board from denying or disciplining a license based upon the underlying misconduct.
- 493 The record of the conviction of a crime shall be conclusive evidence of the fact that the conviction occurred and the Board may inquire into the circumstances surrounding the crime in order to fix the degree of discipline or to determine if the conviction is substantially related.

**Violations of Exam Security**

- 496 Board may deny, suspend, revoke, or restrict license on grounds that applicant for licensure subverted or attempted to subvert administration of examination.

**REGULATIONS RELATING TO LICENSE DENIAL**  
**(Summarized Version of California Code of Regulations)**

1444. Substantial Relationship Criteria

A crime or act is considered substantially related to the practice of nursing if, to a substantial degree, it evidences present or potential unfitness of a registered nurse to perform nursing functions in a manner consistent with the public health, safety, or welfare.

Such acts or crimes include, but are not limited to:

- (a) Conviction of child abuse.
- (b) Violation of Nursing Practice Act.
- (c) Conviction as a mentally disordered sex offender.
- (d) Crime or act involving sale, gift, administration, or furnishing of narcotics, dangerous drugs, or dangerous devices.
- (e) Conviction for assault and/or battery.

1445. Criteria for Rehabilitation

- (a) When considering denial of license, the Board is to consider the following criteria in evaluating the rehabilitation of the applicant and his/her present eligibility for a license.
  - (1) Nature and severity of acts or crimes.
  - (2) Evidence of any additional, subsequent acts which also could be considered grounds for denial.
  - (3) Time that has elapsed since commission of acts or crimes.
  - (4) Extent to which applicant has complied with terms of parole, probation, restitution, or other sanctions.
- (4) Evidence of rehabilitation submitted by applicant.